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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/650,073	08/29/2000	Edward A. Jakush	97-676.5	9189

7590

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Kenneth D'Alessandro  
Sierra Patent Group, Ltd.  
P.O. Box 6149  
Stateline, NV 89449

EXAMINER
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TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/650,073

Applicant(s)

JAKUSH ET AL.

Examiner

Cephia D. Toomer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This Office action is in response to the amendment filed March 4, 2002 in which claims 9, 10, 12, 14-16, 20, 29, 30 and 35-38 were amended.

The previous rejection of the claims under 35 USC 112, second paragraph is withdrawn in view of the arguments presented by applicant.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 12, 16 and 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the specification for a surfactant that is an aliphatic hydrocarbon.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 37 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 37 is confusing. The language in question is "said dinonylphenol ethoxylate is a dinonylphenol ethoxylate."

Claim 38 is confusing. The language in question is "said amine othoxilate is amine othoxilate."

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-11, 13-15, 17-34, 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubin (5,259,851).

Dubin teaches a fuel oil emulsion (o/w or w/o) comprising a fuel oil (diesel), 5-50% demineralized water and an emulsification system. The droplet size is below 5 microns. The emulsification system is present in the emulsion in an amount from 0.05 to 5.0 % by weight. The emulsification system comprises an alkanolamide (oleic diethanolamide), a phenolic surfactant (polymeric dispersant) and a block polymer (see abstract; col. 3, lines 41-44, 58-66; col. 4, lines 11-15, 23-44; col. 5, lines 7-59 and claims 5-12). The emulsification system may also contain stabilizers (see col. 6, lines 54-64). Dubin teaches the limitations of the claims other than the differences which are discussed below.

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Dubin differs from the claims in that he does not specifically teach the proportions of the individual surfactants. However, he does teach that the emulsification system is contained in the emulsion in an amount from 0.05 to 5.0% by weight and he teaches the proportions of the surfactants contained in the system. Therefore, it would have been obvious to one of ordinary skill in the art to have optimized the proportions through routine experimentation to obtain the best results.

7. Claims 39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubin (5,259,851) further in view of Genova et al (US 5,259,851).

Dubin fails to teach that the composition of his invention contains an anti-freeze agent and a cetane improver. However, no unobviousness is seen in this difference because Genova teaches that fuel compositions, such as those taught by Dubin, may contain these conventional additives (see abstract; col. 3, lines 40-47).

It would have been obvious to one of ordinary skill in the art to have included anti-freeze agents and cetane improvers in the composition of Dubin because Genova teaches that these are conventional diesel fuel additives and that they would perform their attendant functions.

8. Claims 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubin and Genova further in view of Wenzel (US 4,002,435).

The prior art teaches that it is conventional for fuel compositions to contain anti-freeze agents. However, the prior art fails to teach which specific compounds are used for this purpose. Wenzel teaches that methanol and ethanol are used in emulsion fuels to provide antifreeze characteristics to the fuel (see col. 4, lines 42-53). It would have

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been obvious to one of ordinary skill in the art to have included methanol as an anti-freeze agent in the composition of Dubin because Wenzel teaches that the alcohol would allow the fuel to be stable below the freezing point of the water that is contained in the emulsion.

9. Claims 43 and 44 are rejected under 35 USC 103(a) as being unpatentable over Dubin and Genova further in view of Schwab (US 5,669,938).

Dubin and Genova fail to teach the specific cetane improvers; however, Schwab teaches this difference. Schwab teaches that w/o emulsions of diesel fuel contains 2-ethylhexyl nitrate and hydrocarbyl peroxides as ignition improvers (see abstract and col. 1, lines 5-30).

It would have been obvious to one of ordinary skill in the art to have included the ignition improvers of Schwab in the composition of Dubin because Schwab teaches that emulsion fuels suffer from a substantial reduction in cetane number and that the nitrates and peroxides help to overcome this problem.

10. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dubin and Genova further in view of European Patent Application 475 620 ("EPA").

Dubin and Genova fail to teach the specifics of the cetane improver; however, EPA teaches this limitation. EPA teaches that oxidizing agents, such as ammonium nitrate improve the cetane number of emulsion fuels (see page 2, lines 19-42).

It would have been obvious to one of ordinary skill in the art to have included the ignition improver of EPA in composition of Dubin because EPA teaches that emulsion

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fuels suffer from a substantial reduction in cetane number and that the oxidizing agents (ammonium nitrate) help to overcome this problem.

11. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that the prior art, Dubin alone or in combination with the other cited references, fail to teach the claimed invention because Dubin makes no reference to or suggestion of using purified water. Applicant argues that the purified water of the present invention contains a certain maximum level of calcium, magnesium and silicon ions.

12. The examiner respectfully disagrees. Applicant's purified water reads on the demineralized water of Dubin. Dubin teaches the demineralized water is not required but is preferred because the use of the demineralized water "avoid the deposit of minerals from the water on the blades and other internal surfaces of the gas turbines" (see col. 4, lines 30-37). Applicant desires this same property. See instant specification at page 5, lines 32-35. With respect to the maximum level of Ca, Mg, and Si ions, Applicant sets forth that the water contains no greater than about 50 parts per million Ca and Mg and no greater than about 20 parts per million silicon (page 5, line 35; page 6, lines 1-3). It should be noted that the language "no greater than" reads on zero and implies that the water is demineralized. Furthermore, the techniques that Applicant uses to purify the water would suggest that the water may be demineralized water.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cephia D. Toomer  
Primary Examiner  
Art Unit 1714

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